

Add Revenue and Taxation Code Section 6018.3 to the Sales and Use Tax Law to specify that a United States veteran, as specified, shall be regarded as a consumer, rather than a retailer, of food products and nonalcoholic beverages that he or she sells, provided that, for purposes of selling these items, the veteran has no employees and no permanent place of business, as defined.

Source: AB 3009 (Honorable Betty Yee)

Existing Law

Under California's Sales and Use Tax Law (Part 1, Division 2 of the Revenue and Taxation Code, commencing with Section 6001), except where specifically exempted by statute, sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail in this state. The law does not contain a general exemption from sales or use tax for sales of tangible personal property by veterans.

Under the law, sales of food products for human consumption in this state are generally exempt from the sales tax unless the food products are sold in a heated condition (except hot bakery items or hot beverages, such as coffee, sold for a separate price), served as meals, consumed at or on the seller's facilities, ordinarily sold for consumption on or near the seller's parking facility, or sold for consumption where there is an admission charge. The term "food products" is defined in law to include most items normally regarded as food, including most beverages and bottled water. However, the law specifically excludes spirituous, malt, or vinous liquors, and carbonated beverages from the definition of "food products," and the retail sale of these items therefore are generally subject to tax.

Under the law, every retailer or any other person engaged in the business of selling tangible personal property of a kind the retail sale of which is taxable in this state is required to obtain a seller's permit and report the tax on his or her sales on a return prescribed by the Board. However, California's Sales and Use Tax Law places a variety of retailers making taxable sales of tangible personal property under a "consumer" reporting status. Under a "consumer" reporting status, a qualifying retailer making otherwise taxable sales is not required to obtain a seller's permit or report tax on those sales. Rather, the qualifying retailer is only required to pay tax on his or her cost of any taxable purchases.

The "consumer" reporting status is primarily intended to minimize reporting burdens placed on smaller businesses and entities, while minimizing the associated revenue loss that can accompany a complete exemption from the tax. The law has extended this consumer reporting status to certain sales by such entities such as nonprofit youth groups, PTAs, nonprofit veterans' organizations, various charitable organizations, schools and school districts, optometrists, veterinarians, podiatrists, licensed hearing aid dispensers, and others with respect to certain products they sell.

This Proposal

This proposal would add Section 6018.3 to the Sales and Use Tax Law to specify that a “qualified itinerant vendor” is a consumer of, and shall not be considered a retailer of, food products and nonalcoholic beverages that he or she sells. The proposal would define a “qualified itinerant vendor” as:

- 1) A person that was a member of the United States Armed Forces, who received an honorable discharge or a release from active duty under honorable conditions from service,
- 2) For the purposes of selling food products and beverages, the person is a sole proprietor with no employees, and
- 3) The person has no permanent place of business in this state.

The proposal would exclude vending machine operators and caterers from its provisions.

Background

For the past 10 years or so, several veterans have argued that state law which exempts honorably discharged veterans from locally-imposed license taxes and fees also exempts itinerant veterans from any tax imposed by the state. More specifically, it has been argued that Section 16102 of the Business and Professions Code exempts honorably discharged veterans from application of the sales and use tax on sales of food products and carbonated beverages from a mobile food cart. This section reads in its entirety as follows:

“Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefore.”

This provision was enacted in 1893 pursuant to AB 74, and was described in the chaptered bill as “An act to establish a uniform system of county and township government.” In its present form (which has remained unchanged since 1941) Section 16102 falls within Chapter 2 of Part 1 of Division 7 of the Business and Professions Code, entitled *Licensing by Counties*.

In 1999, the Board held that this provision does not apply to sales or use taxes imposed pursuant to California’s Sales and Use Tax Law. The Board’s decision was subsequently challenged unsuccessfully in Los Angeles Superior Court (No. BC 210257). The Board’s decision is also consistent with that of the Office of Legislative Counsel in its two opinions specific to this issue rendered in 1998 and 2006, concluding that the exemption provided in this section only applies to county license tax and license fees, and does not apply to sales and use taxes.

This proposal represents a small step in recognizing our veterans who have already made, or who are making the transition from military to civilian employment. It would assist in this transition by simplifying reporting requirements under the Sales and Use Tax Law. This proposal is substantially similar to last year's AB 3009 (Brownley), which the Board unanimously voted to sponsor at its March 18, 2008 Legislative Committee. The bill, however, was held in the Assembly Revenue and Taxation Committee.

Section 6018.3 is added to the Revenue and Taxation Code, to read:

6018.3. (a) A qualified itinerant vendor is a consumer of, and shall not be considered a retailer of, food products and nonalcoholic beverages that he or she sells.

(b) For purposes of this section, a person is a "qualified itinerant vendor" when all of the following apply:

(1) The person was a member of the United States Armed Forces, who received an honorable discharge or a release from active duty under honorable conditions.

(2) For the purposes of selling food products and beverages, the person is a sole proprietor with no employees.

(3) The person has no permanent place of business in this state.

(c) For purposes of this section, "permanent place of business" means any building or other permanently affixed structure, including a residence, that is used in whole or in part for the purpose of making sales of, or taking orders and arranging for shipment of, food products and beverages. For purposes of this section, "permanent place of business" does not include any building or other permanently affixed structure, including a residence, used for the storage of food and nonalcoholic beverages or for the cleaning and storage of equipment used in the preparation and vending of food and nonalcoholic beverages.

(d) This section shall not apply to either of the following:

(1) A person engaged in the business of serving meals, food, or drinks to a customer at a location owned, rented, or otherwise supplied by the customer.

(2) A person operating a vending machine.